

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, *et al*,

Plaintiffs,

v

RICHARD SNYDER, *et al*

Defendants.

Civil Action No. 12-cv-10285

HON. BERNARD A.
FRIEDMAN

MAG. MICHAEL J.
HLUCHANIUK

STATE DEFENDANTS'
REPLY IN SUPPORT OF
ITS MOTION *IN LIMINE* TO
DISQUALIFY AND
EXCLUDE VIVEK S.
SANKARAN, J.D.

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Dated: February 14, 2014

INTRODUCTION

Plaintiffs' arguments in support of Vivek Sankaran's qualifications, relevance, and necessity are unavailing. His testimony is unnecessary, irrelevant, and he is unqualified to render the opinions he proposes. Thus, the Court should disqualify and exclude him from the trial.

ARGUMENT

- I. If permitted to testify, Plaintiffs' proposed legal expert Vivek Sankaran will iterate and opine on the law, thereby invading the province of the Court. Thus, he should be disqualified and excluded from the trial.**

Mr. Sankaran is an attorney who is only being offered as an expert in foster care.

Q. And you understand that you're being offered as an expert in the area of foster care?

A. That's correct. (1/29/14 Sankaran Dep. Tr. at 7, attached to State Defendants' Motion to Disqualify and Exclude, Doc. #114, as Exhibit B).

At best, he can offer legal opinions regarding foster care laws – something that is not at issue in this trial. Moreover, offering legal

opinions and testimony will invade the province of the Court as the ultimate arbiter of the law.

As exhibited by his expert report and deposition, Mr. Sankaran relies on three primary sources of information to formulate his legal opinions:

- (1) social-science studies, of which he is not an author;
- (2) his own anecdotal experience; and
- (3) Michigan statutes related to adoption and foster-care.

With respect to the first source, Mr. Sankaran, by his own admission, is not a social scientist and thus cannot attest to the rigors of those fields to ensure the reliability of the studies on which he relies to draw his conclusions. (1/29/14 Sankaran Dep. Tr. at 6, attached to State Defendants' Motion to Disqualify and Exclude, Doc. #114, as Exhibit B); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999). Thus, he is unqualified to render opinions based on these studies.

Second, Mr. Sankaran's anecdotal experience is insufficient to allow him to render any expert opinions. Relevant to this litigation, Mr. Sankaran bases his opinions on **five to eight cases** in which he worked

with same-sex couples in an adoption or foster-care context over a ten year span, as well as some discussions with other practitioners.

(1/29/14 Sankaran Dep. Tr. at 50, 62, 64, attached to State Defendants' Motion to Disqualify and Exclude, Doc. #114, as Exhibit B.) Such limited experience hardly qualifies him to render any expert opinions on the State's rationale for retaining the definition of marriage. *See* Fed. R. Evid. 702, 703. Thus, he should be disqualified and excluded.

Finally, the legal aspect of his expert report reads much like a brief that either party could file in this case. Mr. Sankaran asserts what Michigan law is and then cites to statutes. (Expert Report of Vivek S. Sankaran, J.D., at 1, attached to State Defendants' Motion to Disqualify and Exclude, Doc. #114, as Exhibit A.) If he is allowed to testify accordingly, it would only serve to waste the Court's time. *See* Fed. R. Evid. 403.

Plaintiffs' contend that Fed. R. Evid. 704 allows Mr. Sankaran to offer legal opinions, but the Sixth Circuit Court of Appeals has held otherwise. Rule 704 states that an opinion is not objectionable just because it embraces an ultimate issue. But "[e]xpert testimony on the law is excluded because the trial judge does not need the judgment of

witnesses.” *United States v. Zipkin*, 729 F.3d 384, 387 (6th Cir. 1984) (discussing legal experts in light of Rule 704). Indeed, the “special legal knowledge of the judge makes the witnesses’ testimony superfluous.” *Id.* Here, Mr. Sankaran’s testimony would essentially be cumulative to the briefing of the parties and the Court’s independent legal research. *See* Fed. R. Evid. 403. As such, Mr. Sankaran’s testimony should be excluded.

CONCLUSION AND RELIEF REQUESTED

State Defendants respectfully request that this Court grant its Motion *in Limine* to Disqualify and Exclude Vivek S. Sankaran, J.D.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on February 14, 2014, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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